

NO. 46938-3-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,  
Respondent,

v.

KYLE J. STODDARD,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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THE HONORABLE DAVID L. EDWARDS, JUDGE

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BRIEF OF RESPONDENT

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## **RESPONDENT'S COUNTER STATEMENT OF THE CASE**

Defendant was an inmate in general population at Stafford Creek Corrections Center. Verbatim Record of Proceedings 10/30/2014 at 52. Torey Casey is a corrections officer who works in recreation at Stafford Creek. On December 4, 2013 CO Casey encountered Defendant in the chow hall. *Id.* at 27. CO Casey observed Defendant sit at a table by himself, then move when another offender sat down at the table, which is prohibited. *Id.* at 29. CO Casey told Defendant to go back to his seat, to which Defendant replied with a defiant obscenity. *Id.*

Defendant was told to leave the chow hall because of his disruptive, potentially dangerous behavior. *Id.* at 30. Defendant started stuffing food in his pockets, which is also disallowed. *Id.* CO Casey told Defendant of this, and Defendant threw his tray on the ground, came towards CO Casey and stated that he was going to “kick his fucking ass.” *Id.* CO Casey described it as though Defendant “just snapped.” *Id.*

CO Casey called for help and Sgt. Lane responded and gave Defendant a directive to stand for search. *Id.* Sgt. Lane described Defendant's behavior as “out of control” and “threatening staff” and heard Defendant say that he was going to kiss an officer's “fucking ass.” *Id.* at 44-45. Sgt. Lane testified that Defendant was coming towards him with

fists clenched, repeating the same vulgar threat. *Id.* at 45. Sgt. Lane retreated behind a railing as another officer used pepper spray on Defendant. *Id.* Sgt. Lane recalled that Defendant swung at him, but did not hit him. *Id.* at 47. Defendant then charged through some doors and knocked down Officer Daniels, another corrections officer. *Id.* at 48.

Officer Daniels is the movement and control officer. *Id.* at 53. He was outside of the chow hall, watching through the window. *Id.* He could see through the window that Defendant was angry and agitated, and that he was approaching Sgt. Lane, who was trying to get tables between himself and Defendant. *Id.* CO Daniels was trying to lock the door but couldn't get his keys in time, so he put his shoulder to the door to brace it. *Id.* at 55. Defendant hit the door, knocking CO Daniels to the ground. *Id.* at 56.

Outside, the officers put Defendant on the ground and gave him verbal directives to stop fighting and put his hands behind his back, but Defendant is combative and uncooperative. *Id.* at 48. Defendant was fighting the other officers, swinging wildly. *Id.* at 56. CO Daniels was on the ground, and Defendant ran in his direction, still swinging. *Id.* at 57. CO Daniels was able to grab Defendant and get control of him, and bring him to the ground. *Id.* at 57. Defendant appeared to be unconscious for a

second, then started swinging at CO Daniels again. *Id.* at 58. CO Daniles tucked his head in to protect himself. *Id.* Other officers were then able to gain control of Defendant. *Id.* at 59.

The State charged Defendant with two counts of Custodial Assault on March 27, 2014, one for CO Casey and one for Sgt. Lane. CP at 29-30.

On June 23, 2014 a hearing was conducted wherein Defendant's trial counsel complained of the difficulties in communicating with Defendant. VRP 6/23/14 at 3-4. The Court ruled that Defendant would be held in the Grays Harbor County Jail until he had a chance to have an appointment with his attorney. Supp. CP at \_\_\_\_\_. The Court instructed Defendant "to be a perfect gentlemen." VRP 6/23/14 at 6. The Court specifically instructed Defendant not to assault guards. *Id.* at 7. Defendant acknowledged. *Id.*

While in the Grays Harbor jail Defendant assaulted a county Corrections Deputy, breaking his jaw. VRP 10/30/14 at 21. This resulted in the filing of a charge of Assault in the Second Degree. Supplemental Clerk's Papers at 34. Additionally, The State added a third count for CO Daniels in this case. CP at 24-25.

The trial court was concerned about security in the courtroom in advance of the trial, inquiring of the prosecutor about the issue many days

in advance. VRP 10/27/2014 at 7. Because of Defendant's previous assaultive behavior, he was unwelcome at the county jail. *Id.* at 6. The State explained that the Department of Corrections would have multiple officers in the courtroom, and Defendant would be wearing a restraint device that would not be visible to jurors. *Id.* at 7. The trial court advised Defendant that he would appear without visible restraints, and that he was to be respectful of the jury and the other people in the courtroom. *Id.* at 7-8.

On the day of trial, without the jury present, the trial court made a record of the reasons for the courtroom security measures. VRP 10/30/2014 at 20. Because the Department of Corrections had explained that the restraint device would not fully incapacitate Defendant the trial court ordered counsel table moved forward to accommodate two corrections officers seated behind Defendant. *Id.*

The reasons stated by the trial court were: the nature of the instant charges involved acts of violence against corrections officers, that Defendant assaulted and broke the jaw of a corrections deputy while Defendant was temporarily housed at the county jail while the instant case

was pending<sup>1</sup>, and Defendant's statements of his future willingness and even intent to continue assaulting corrections officers. *Id.* at 20-21. The court had also been advised that Defendant had five prior convictions for assaulting police, one of which had resulted in a conviction for Assault in the First Degree. Supp. CP at 34.

### **RESPONSE TO ASSIGNMENTS OF ERROR**

**1. The trial court was within its discretion to allow Defendant to be restrained during trial.**

Defendant claims that the court violated his rights by allowing the Department of Corrections to fit Defendant with a non-visible restraint device. However, a) a trial court has discretion to impose restraints on a criminal defendant; and b) Defendant could not have suffered prejudice since the device was not visible. Defendant's assertion that the court deferred to the corrections staff is contrary to the record, and his claims of some mental anguish, detectable by the jury, are speculative.

**The trial court has discretion to allow restraints.**

The trial court acted within its discretion when it approved of the restraint device. "[A] trial court has broad discretion to determine which

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<sup>1</sup> The trial court mistakenly stated that a previous attorney had made the request that Defendant be housed locally, but the State corrected the court on that point. VRP 10/30/2014 at 22.

security measures are necessary to maintain decorum in the courtroom and to protect the safety of its occupants.” *State v. Afeworki*, 189 Wn. App. 327, 352, 358 P.3d 1186 (2015) (citing *State v. Damon*, 144 Wash.2d 686, 691, 25 P.3d 418 (2001).) “[I]t is particularly within the province of the trial court to determine whether and in what manner, shackles or other restraints should be used. *State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227 (2015) *review denied*, 183 Wn.2d 1025, 355 P.3d 1154 (2015). The reasons for the court’s decision must be founded upon a factual basis set forth in the record. *State v. Hartzog*, 96 Wash.2d 383, 400, 635 P.2d 694 (1981). “Prison officials are well positioned to assist the trial court in deciding matters of courtroom security.” *Walker* at 797. “Although prisoner status, standing alone, may not warrant shackling... it may justify the trial judge's concern for security.” *Wilson v. McCarthy*, 770 F.2d 1482, 1485 (9th Cir. 1985) (citing *U.S. v. Esquer*, 459 F.2d 431, 433(7<sup>th</sup> Cir. 1972) and *Harrell v. Israel*, 672 F.2d 632, 637 (7<sup>th</sup> Cir. 1982) internal citations omitted.).

Some factors that a trial court may consider include:

- the seriousness of the present charge;
- the defendant’s temperament and character;
- the defendant’s past record;



- past escapes or escape attempts, and evidence of current escape plans;
- threats to harm others or cause a disturbance;
- self-destructive tendencies;
- the risk of mob violence or of attempted revenge by others;
- the possibility of rescue by other offenders still at large;
- the size and the mood of the audience;
- the nature and physical security of the courtroom; and
- the adequacy and availability of alternative remedies.

*Afeworki* at 358 (citing *Damon*.)

In the instant case the court made note of the assaultive nature of the current charges, his stated intent to continue in his assaultive behavior, and the assault that occurred while the case was pending. Given Defendant's violent history and record and stated intent of assaulting corrections officers, who were present in the courtroom as security, the court's decision to allow the restraint device was not an abuse of discretion, but a sound decision. This court should uphold the decision.

**Restraints which are not visible do not prejudice a defendant.**

"Visibility of the shackles is critical to the determination of the due process issue." *U.S. v. Cazares*, 788 F.3d 956, 966 (9th Cir. 2015) (citing *U.S. v. Mejia*, 559 F.3d 1113, 1117 (9th Cir.2009).) A restraint that is not

visible to observers does not implicate the prejudice to a defendant's presumption of innocence that visible shackles do. *Afeworki* at 353.

In *State v. Aleworki* the defendant was fitted with a device called a "Band-It," which is "essentially a taser [*sic*] contained in a band that is worn under a sleeve or pant leg[]", similar to the device that Defendant in the instant case was fitted with. The court noted that restraints that do not physically restrain a defendant do not give rise to the concerns that the restraint would interfere with a defendant's ability to confer with counsel, and that such restraint devices have been held to pose fewer risks to a defendant's constitutional rights than other types of physical restraints. *Afeworki* at 353. Indeed, "the [U.S.] Supreme Court has stressed at least six times that its holdings regarding shackling of defendants is limited to visible restraints." *Earhart v. Konteh*, 589 F.3d 337, 348 (6th Cir. 2009).

As in *Afeworki*, Defendant was fitted with a restraint beneath his clothes. There is no evidence in the record that the restraint was ever visible to the jury, that the restraint constrained his ability to confer with counsel, or interfered with his movement. There is nothing in the record to suggest he was prejudiced in any way by this restraint and this court should uphold the trial court's decision to allow the restraint, and uphold the conviction.

**Defendant's claims of prejudice are contrary to the record and speculative.**

Defendant claims that the court deferred to the corrections officers as to the security measures to be taken, and to the decision to have Defendant wear the immobilization device. The record is clear that the trial court did not simply defer, but was concerned about security well in advance, and even took additional steps when the court felt that only the immobilization device was insufficient.

Defendant also contends that a lack of a specific threat against courtroom staff makes the trial court's decision error. This argument is the equivalent of saying that a court cannot take proactive measures to maintain security in the courtroom. Such a ruling would make courtrooms a more dangerous place.

Defendant essentially argues that a trial court is limited to taking reactive measures to an assaultive defendant's behavior, that a defendant who has proven himself to be violent, contrary to a trial court's direct order, on at least one occasion, cannot be restrained until he hurts someone in court. Like a dog, a defendant should get "one free bite" before measures are taken. This is unacceptable and would start a precedent resulting in injury to courtroom staff, lawyers, judges and others who work in the courtrooms of this state.

Defendant also asks this court to speculate that the immobilization device effected his testimony due to some mental anguish. This court should not engage in such speculation. Defendant's testimony was that he did not behave in an assaultive manner towards the prison guards, but the video clearly shows the guards backing away from Defendant, and Defendant swinging his arms towards them. The electronic device that caused the jury to disbelieve Defendant is more likely to be a camera than what was strapped to his leg.

There was no error in allowing Defendant to be restrained. The trial court's decision should be affirmed and the conviction upheld.

**2. A rational jury could have found Defendant acted with intent.**

Defendant next challenges the jury's finding that Defendant acted with intent when he burst out of a set of doors, knocking corrections officer Daniels to the ground, and then swung his arms around in an assaultive manner.

**Standard of Review.**

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068 (1992)

(citing *State v. Green*, 94 Wash.2d 216, 220–22, 616 P.2d 628 (1980).) “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* (citing *State v. Partin*, 88 Wash.2d 899, 906–07, 567 P.2d 1136 (1977).) “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (citing *State v. Theroff*, 25 Wash.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wash.2d 385, 622 P.2d 1240 (1980).) Appellate courts “defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” *State v. Homan*, 181 Wn. 2d 102, 106, 330 P.3d 182, 185 (2014) (citing *State v. Jackson*, 129 Wash.App. 95, 109, 117 P.3d 1182 (2005).)

**The jury could have believed that Defendant acted intentionally, given his actions in regards to the other officers.**

Defendant argues that the assault against CO Daniels could not have been intentional because CO Daniels was on the other side of a door and Defendant was temporarily blinded by pepper spray. This is based upon *Defendant's* testimony that he did not see CO Daniels on the other side of the door.

However, Defendant also testified that he did not make statements that he was going to hurt someone. VRP 10/30/15 at 94. He testified that he did not swing his fists at the officers. VRP 10/30/15 at 96. He testified that he did not throw punches when he made it outside. *Id.* All of this testimony was contradicted by the testimony of the corrections officers. Clearly, the jury chose to disbelieve Defendant's testimony. It is unsurprising that they found Defendant's actions were intentional.

Additionally, CO Daniels testified that he had been watching the events through the window for some time, and was trying to prevent Defendant from exiting. VRP 10/30/15 at 55. The jury may have found that Defendant knew CO Daniels was there, not because he saw him right before he burst through the doors, but because he saw him before being pepper sprayed, and burst the door to prevent it from being locked.

Further, Defendant's theory that knocking CO Daniels down with a door was unintentional ignores the testimony of Defendant's other assaultive behavior after knocking down CO Daniels, which was described as "swinging." VRP 10/30/15 at 56-57. A jury could have found that this constituted as assault against CO Daniels.

Taken as a whole, the evidence was that Defendant flew into a rage, and made assaultive statements while throwing punches at

corrections officers. It is no great surprise that the jury believed that Defendant meant to assault all the corrections officers he encountered.

This court should not assume the jury did not follow the instructions and convicted Defendant without any evidence of Defendant's intent. Rather, this court should defer to the trier of fact and uphold Defendant's conviction.

### **CONCLUSION**

Defendant has proved himself to be a dangerous person by his behavior prior to the instant incident, by the three assaults that are at issue here, by the assault on the county corrections deputy he committed while this case was pending, and by his stated intention to continue to assault. A trial court has discretion to order shackling, even though visible shackles are prejudicial to a defendant. In this case the trial court ruled that there were reasons not only for an invisible restraint device, but for corrections officers to be seated behind Defendant, in view of the jury, in order to maintain security. This was the court's decision, although the specific device was one that the Department of Corrections provided. The record reflects the court's reasoning, findings and decision, and this court should uphold that decision.

The jury found that Defendant intentionally assaulted CO Daniels. They were instructed on intent, and presumably followed their instructions, which required an intentional assault. The jury may disbelieved Defendant's testimony that he was blind when he knocked over CO Daniels, or believed that his struggling afterwards was an assault, but this court should not second-guess the trier of fact, but leave the verdicts undisturbed.

DATED this 24<sup>th</sup> day of December, 2015.

Respectfully Submitted,

BY: s/ Jason F. Walker  
JASON F. WALKER  
Chief Criminal Deputy  
WSBA # 44358



# GRAYS HARBOR COUNTY PROSECUTOR

**December 24, 2015 - 12:20 PM**

## Transmittal Letter

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